

Title 14

INDEPENDENT AGENCIES

Subtitle 01 PRESCRIPTION DRUG AFFORDABILITY BOARD

14.01.03 Public Information Act

Authority: General Provisions Article §§4-101—4-601; Health-General Article, §21-2C-03(f)(1); Annotated Code of Maryland

.01 Scope.

This chapter sets out procedures under the Public Information Act for filing and processing requests for the public records of the Prescription Drug Affordability Board.

.02 Policy.

It is the policy of the Board to facilitate access to the public records of the Board, if access is allowed by law, by minimizing costs and time delays to applicants.

.03 Definitions.

A. In this chapter, the following terms have the meanings indicated.

B. Terms Defined.

(1) “Act” means the Public Information Act, General Provisions Article, §§4-101—4-601, Annotated Code of Maryland.

(2) “Applicant” has the meaning stated in General Provisions Article, §4-101(b), Annotated Code of Maryland.

(3) “Copy” means any form of reproduction using a photocopying machine or other reproduction technology, including a paper copy, an electronic copy, a printout, or an image.

(4) “Custodian” has the meaning stated in General Provisions Article, §4-101(d), Annotated Code of Maryland.

(5) “Executive Director” means the Executive Director of the Board as provided in Health-General Article, §21-2C-03, Annotated Code of Maryland.

(6) “Indigent” has the meaning stated in General Provisions Article, §4-206(a)(2), Annotated Code of Maryland.

(7) “Metadata” has the meaning stated in General Provisions Article, §4-205(a), Annotated Code of Maryland.

(8) “Official custodian” has the meaning stated in General Provisions Article, §4-101(f), Annotated Code of Maryland.

(9) “PIA coordinator” means the Board employee who is responsible for accepting requests for public records.

(10) “Public Access Ombudsman” means the official appointed under General Provisions Article, Title 4, Subtitle 1B, Annotated Code of Maryland, to resolve disputes under the Act.

(11) “Public record” has the meaning stated in General Provisions Article, §4-101(j), Annotated Code of Maryland.

(12) “Reasonable fee” has the meaning stated in General Provisions Article, §4-206(a)(3), Annotated Code of Maryland.

(13) “Sociological information” means personal phone number, personal email address, and personal home address.

.04 Official Custodian.

Unless otherwise provided by law, the Executive Director is the official custodian of the public records of the Board.

.05 Request for Public Records.

Any person may request to inspect or copy the public records of the Board.

.06 Written Request May Be Required.

A. Inspection.

(1) Except as otherwise provided in this chapter, the custodian shall make public records of the Board available for inspection by an applicant without demanding a written request.

(2) The custodian shall require a written request if the custodian reasonably believes that:

(a) The Act or any other law may prevent the disclosure of the public record to the applicant; or

(b) A written request will materially assist the Board in responding.

B. Copies. If the applicant requests one or more copies of any public record of the Board, the custodian may require a written request.

.07 Contents of Written Request.

A. A written request shall:

(1) Contain the applicant’s contact information; and

(2) Reasonably identify, by brief description, the public record sought.

B. Written requests from the same requestor may be consolidated.

.08 Addressee.

A request to inspect or copy a public record of the Board shall be addressed to the custodian of the record or to the Board’s PIA coordinator as designated under General Provisions Article, §4-503, Annotated Code of Maryland. If the custodian is unknown, the request may be addressed to “Executive Director” or “PIA Coordinator”.

.09 Response to Request.

A. Grant of Request.

(1) If the custodian decides to grant a request for inspection, the custodian shall produce the public record for inspection:

- (a) Immediately; or
- (b) Within a reasonable time period, not to exceed 30 days after the date of the request, if that period is needed to retrieve the public record and conduct any necessary review.

(2) If the custodian reasonably believes that it will take more than 10 working days to produce the public record, the custodian shall indicate in writing or by electronic mail within 10 working days after receipt of the request:

- (a) The amount of time that the custodian anticipates it will take to produce the public record;
- (b) An estimate of the range of fees that may be charged to comply with the request for public records; and
- (c) The reason why it will take more than 10 working days to produce the records.

B. Denial of Request. If the custodian decides to deny a request for inspection, the custodian shall:

- (1) Deny the request within 30 days after the request; and
- (2) Notify the applicant of the denial.

C. If a request is denied, the custodian shall provide the applicant, at the time of the denial or within 10 working days, a written statement that includes:

(1) The reasons for the denial, including, for records denied under General Provisions Article, §4-343, Annotated Code of Maryland, a brief explanation of:

- (a) Why the denial is necessary, that is, why disclosure of the public record would be contrary to the public interest; and
 - (b) An explanation of why redacting information would not address the reasons for the denial;
- (2) The legal authority for the denial;
- (3) Without disclosing the protected information, a brief description of the undisclosed record or records that will enable the applicant to assess the applicability of the legal authority for the denial; and
- (4) Notice of the remedies available for review of the denial.

D. If a requested public record is not in the custody or control of the person to whom application is made, that person shall, within 10 working days after receipt of the request:

- (1) Notify the applicant that the person does not have custody or control of the requested public record; and
- (2) If the person knows, include:
 - (a) The name of the custodian of the public record; and
 - (b) The location or possible location of the public record.

E. Any time limit imposed by §§A—C of this regulation may be extended, with the consent of the applicant, for an additional period of up to 30 days.

.10 Notice to Person Potentially Affected by Disclosure.

A. Unless prohibited by law, the custodian may provide notice of a request for inspection or copying of any public record of the Board to any person who, in the judgment of the custodian, could be adversely affected by disclosure of that public record.

B. The custodian may consider the views of the potentially affected person before deciding whether to disclose the public record to an applicant.

.11 Electronic Records.

A. Except as provided in §§C and D of this regulation, the custodian shall provide an applicant with a copy of the public record in a searchable and analyzable electronic format if:

- (1) The public record is in a searchable and analyzable electronic format;
- (2) The applicant requests a copy of the public record in a searchable and analyzable electronic format; and
- (3) The custodian is able to provide a copy of the public record, in whole or in part, in a searchable and analyzable electronic format that does not disclose information that is protected from disclosure under the Act.

B. The custodian shall provide a portion of the public record in a searchable and analyzable electronic format if:

- (1) Requested by the applicant; and
- (2) The custodian is able to do so by using the existing functions of the database or software program that contains the searchable and analyzable data.

C. The custodian is not required to:

- (1) Create or reconstruct a public record in an electronic format if the public record is not available in an electronic format;
- (2) Release an electronic record in a format that would jeopardize or compromise the security or integrity of the original record or of any proprietary software in which the record is maintained; or
- (3) Create, compile, or program a new public record.

D. The custodian may remove metadata from an electronic document before providing the electronic record to an applicant by:

- (1) Using a software program or function; or
- (2) Converting the electronic record into a different searchable and analyzable format.

.12 Public Record Destroyed or Lost.

If the person to whom application is made knows that a requested public record of the Board has been destroyed or lost, that person shall promptly:

- A. Notify the applicant that the public record is not available; and*
- B. Explain the reasons why the public record cannot be produced.*

.13 Availability of Judicial and Administrative Review.

If the custodian denies a request to inspect or copy a public record of the Board, the applicant may file an action for judicial enforcement under General Provisions Article, §4-362, Annotated Code of Maryland, without pursuing the remedies set forth in General Provisions Article, Subtitles 1A and 1B, Annotated Code of Maryland.

.14 Disclosure Against Public Interest.

A. Denial Pending Court Order.

(1) If, in the opinion of the Executive Director, disclosure of a public record of the Board otherwise subject to disclosure under the Act would do substantial injury to the public interest, the Executive Director may temporarily deny the request to obtain a court order allowing nondisclosure.

(2) The temporary denial shall be in writing.

B. Circuit Court Review.

(1) Within 10 working days after the denial, the Executive Director shall apply to the appropriate circuit court for an order permitting continued denial or restriction of access.

(2) Notice of the Executive Director's complaint shall be served on the applicant in the manner provided for service of process by the Maryland Rules of Procedure.

.15 Fees.

A. Except as provided in §§B and C of this regulation, the fee schedule for copying and certifying copies of public records of the Board is as follows:

(1) For each copy made by a standard printer or a photocopying machine within the Board, the fee is 25 cents per page;

(2) For each copy made other than by a standard printer or a photocopying machine within the Board, the fee shall be based on the actual cost of reproduction; and

(3) For a public record certified as a true copy, an additional fee of \$1 per page (or, if appropriate, per item) shall be charged.

B. Minimum Fee. A charge may not be made if the total fee is \$1 or less.

C. If the fee for copies or certified copies of any public record of the Board is specifically set by a law other than the Act or this regulation, the custodian shall charge the prescribed fee.

D. If the custodian cannot copy a public record within the Board, the custodian shall make arrangements for the prompt reproduction of the record at public or private facilities outside the Board. The custodian shall:

(1) Collect from the applicant a fee to cover the actual cost of reproduction; or

(2) Direct the applicant to pay the cost of reproduction directly to the facility making the copy.

E. Before copying a public record of the Board, the custodian shall estimate both the cost of reproduction and the search and preparation fee under §F of this regulation and either:

(1) Obtain the agreement of the applicant to pay the cost; or

(2) Demand prepayment of all or a portion of the cost.

F. Search and Preparation Fee.

(1) Except as provided in §G of this regulation, the custodian may charge a reasonable fee for time that an official or employee of the Board spends to:

(a) Search for requested public records;

(b) Review requested public records for potential disclosure; and

(c) Prepare public records for inspection and copying.

(2) The custodian shall determine the fee under §F(1) of this regulation by multiplying the employee's salary, prorated to an hourly basis, by the actual time attributable to the search for, review of, and preparation of public records for inspection and copying.

G. The custodian may not charge a search or preparation fee under §F of this regulation for the first 2 hours needed to search for and prepare a public record for inspection.

H. Waiver or Reduction of Fee.

(1) The official custodian may waive or reduce any fee set under this regulation if:

(a) The applicant requests a waiver; and

(b) Either:

(i) The custodian determines that the waiver or reduction is in the public interest; or

(ii) The applicant is indigent and files an affidavit verifying the facts that support a claim of indigency.

(2) In determining whether a fee waiver is in the public interest, the custodian shall consider, among other relevant factors, the ability of the applicant to pay the fee.

I. If the applicant requests that copies of a public record be mailed or delivered to the applicant or to a third party, the custodian may charge the applicant for the cost of postage or delivery.

.16 Time and Place of Inspection.

A. An applicant may inspect any public record of the Board that the applicant is entitled to inspect during the normal working hours of the Board.

B. The inspection shall occur where the public record is located unless the custodian, after taking into account the applicant's expressed wish, determines that another place is more suitable and convenient.

.17 Sociological Information.

Except for use in carrying out the custodian's governmental functions or if disclosure is otherwise required by law, and in compliance with General Provisions Article, §4-330, Annotated Code of Maryland, a custodian may not disclose under the Act, and shall deny a request for inspection or copying of, the part of a public record that contains sociological information relating to an individual.